Supreme Court, U.S.
FILED
DEC 16 1993
OFFICE OF THE CLERK

No. 93840

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

HOWARD L. SCOTT,

Petitioner,

v.

AVON PRODUCTS, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS AVON PRODUCTS, INC. GIORGIO OF BEVERLY HILLS, INC. AND SUPPLEMENTAL APPENDIX

Alan H. Bernstein,
Counsel of Record
CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
1635 Market Street, 12th Floor
Philadelphia, PA 19103-2212
(215) 567-2010

Robert S. Silver
CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
1635 Market Street, 12th Floor
Philadelphia, PA 19103-2212

PACKARD PRESS / LEGAL DIVISION, 1617 JFK BOULEVARD, PHILA., PA 19103 (215) 563-9000

QUESTIONS PRESENTED

Pro se Petitioner's questions presented for review are merely a scurilous, unfounded and incomprehensible attack on the parties and the district court judge and it is submitted do not constitute proper questions for review.

CORPORATE DISCLOSURE

Respondent Giorgio of Beverly Hills, Inc., is a wholly owned subsidiary of Avon Products, Inc.

PARTIES TO THIS PROCEEDING

Petitioner: Howard Scott, pro se, and no other petitioner

Respondents: Avon Products, Inc. and Giorgio of Beverly Hills, Inc.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
CORPORATE DISCLOSURE	ii
PARTIES TO THIS PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
CONCLUSION	7

TABLE OF AUTHORITIES

CASES: Page

Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 61 (1982) 6

STATUTES:

28 U.S.C., Rule 4, Fed.R.App.P. 1

OTHER:

9 *Moore's Federal Practice*, note 4, ¶204.14, pp. 4-124.3 to 4-125 6

JURISDICTION OF THE SUPREME COURT

The Supreme Court lacks jurisdiction over the petition for writ of certiorari since the underlying notice of appeal from the district court to the United States District Court of Appeals for the Third Circuit was untimely. 28 U.S.C., Rule 4, Fed.R.App.P.

Petitioner's Statement of the Jurisdiction of this Court fails to discuss the time factors upon which jurisdiction rests as required under Supreme Court Rule 24(e).

STATUTORY PROVISIONS

28 U.S.C., Rule 4, Fed.R.App.P. (Respondents' Appendix 1b-3b)

STATEMENT OF THE CASE

Respondents provide this statement of the case not because these facts are absolutely necessary to dispose of the petition, but because of the massive confusion created by Petitioner's incomprehensible petition for writ of certiorari. Respondents' Appendix includes documents of record which Petitioner failed to include in his Appendix.[1]

Pro se Petitioner Howard Scott was the named inventor in certain issued United States and foreign patents for certain cosmetic compositions and methods of treating skin using those compositions. Mr. Scott assigned all his right, title and interest in and to those patents to Widener University in Delaware.

Mr. Scott apparently owns an interest in certain entities which he listed in the parties to this proceeding, including various Fabalon corporate entities involved in the cosmetic business, however, since Mr. Scott is appearing pro se, it is submitted that he is not entitled to represent any alleged interest of these corporate and other listed entities.

Mr. Scott, Fabalon Co., Inc., and others, sued Respondents Avon Products, Inc., Giorgio of Beverly Hills, Inc. (and others) for patent infringement, RICO violations and other outlandish state causes of action relating to alleged infringement of the patents he no longer owned any rights in. The plaintiffs were at that time represented by attorney Gregory H. Wheeler. Mr. Wheeler had been the subject of a disciplinary proceeding before the Disciplinary Board of the Supreme Court of the Commonwealth of Pennsylvania, for certain actions unrelated to this case. The initial reviewers of Mr. Wheeler's complained of actions recommended that he be suspended for a year and a day (Pet. A-13 to A-15),

---

1. References to Petitioner's Appendix are denoted (Pet. A-) and references to Respondents' Appendix are denoted (Respon. A-) followed by the relevant page number.

however, this was never implemented. Mr. Scott acknowledges that it was only a recommendation on page 2 of his petition, but misleads this Court by stating in his first question presented that Mr. Wheeler had in fact been disbarred. Sometime thereafter, plaintiffs also obtained counsel Ms. Vernita Williams (Pet. A-7), Mr. Scott's niece, but Mr. Wheeler remained as plaintiffs' counsel.

After completing certain discovery, Respondents Avon Products, Inc., Giorgio of Beverly Hills, Inc., and others moved for summary judgment on all counts of the complaint. At a regularly scheduled status conference in the case held on June 29, 1992 (Pet. A-16,17), the district court judge briefly discussed on the record the pending motions for summary judgment (Pet. A-17-21). Mr. Wheeler was present at that status conference (Pet. A-20) and the district court judge acknowledged on the record that he had just spoken to plaintiffs' counsel [Ms. Vernita Williams] who would not attend the hearing since she resided in Florida (Pet. A-17).

Thereafter, on July 7, 1992, the district court granted summary judgment on all counts of the complaint in favor of Respondents Avon Products, Inc. and Giorgio of Beverly Hills, Inc. (Pet. A-12). In granting the summary judgment motion, the district court opinion expressly relied only on matters in the record, and not on any statements Mr. Wheeler made at the status conference, as is readily clear from reading the text of the opinion (Resp. A-4b). The district court closed the case on July 9, 1992, which was entered on July 16, 1992.

Mr. Scott, in a pure act of desperation and lacking any substantive legal skills, apparently on behalf of himself and others, belatedly filed a long series of appeals and requests for reconsideration, which were all denied. Mr. Scott repeatedly alleged that Respondents, the district court judge and Mr. Wheeler conspired to create a fraud to have the case dismissed.

On July 22, 1992, plaintiffs moved to set aside the July 10, 1992 Order granting summary judgment. The

court denied the motion on October 2, 1992 (entered on October 5, 1992).

On November 4, 1992, plaintiffs moved to remove Mr. Wheeler from the case and the motion was denied on November 19, 1992. Plaintiffs (other than Mr. Scott) filed an untimely notice of appeal on December 18, 1992, which was entered on December 30, 1992. Mr. Scott filed his own untimely notice of appeal on December 23, 1992, entered on December 28, 1992.

After the plaintiffs-appellants filed two their appeals, sua sponte, the Third Circuit requested that they explain to the court why they believed jurisdiction of the appeals existed in view of the court's belief that jurisdiction was lacking. All parties responded to such a request and all appellees moved to dismiss the two appeals for lack of jurisdiction and requested sanctions.

While the appellees Avon Products, Inc. and Giorgio of Beverly Hills, Inc. filed a brief in the first docketed appeal, they subsequently filed a motion to defer filing a brief in the second appeal until the Third Circuit decided whether jurisdiction existed, in view of the court's sua sponte requesting the plaintiffs to explain why jurisdiction existed. The Third Circuit denied Mr. Scott's motion to vacate that extension of time and as a matter of judicial economy granted appellees ten days after the jurisdiction issue was decided to file a brief on the merits, hence no briefing schedule was set in the second appeal (Pet. A-3, 4). This extension of time to appellees appears to be what Mr. Scott is now complaining of in his second question presented, in that he contends he should have been permitted to file an appellant's brief prior to having the second appeal dismissed.

The United States District Court of Appeals for the Third Circuit dismissed Mr. Scott's and the other plaintiffs-appellants' two appeals Nos. 92-2090 and 92-2115, for lack of jurisdiction on the merits and for mootness of any remaining issue regarding removal of an attorney from a closed case on April 28, 1993 (Pet. A-3,4). The Third Circuit also granted Respondent's

motions for dismissal. Mr. Scott appeals from the dismissal of the two appeals.

On May 28, 1993, the Third Circuit refused Mr. Scott's petition for rehearing en banc (Pet A-2).

Mr. Scott's petition for writ of certiorari contains clear misstatements of fact, and is incomprehensible and therefore impossible to address. The petition provides no legal authority for the requested relief.

SUMMARY OF THE ARGUMENT

Mr. Scott's Notice of Appeal to the United States Court of Appeals for the Third Circuit, was *untimely* under Rule 4, Rules of Appellate Procedure, since the Notice was dated more than 30 days after entry of each of the judgments and orders appealed from. A timely notice of appeal is jurisdictional and mandatory. Since Mr. Scott's appeal to the Third Circuit was untimely, and was dismissed for lack of jurisdiction on the merits, the Court lacks jurisdiction to hear Mr. Scott's petition for writ of certiorari.

Mr. Scott also lacks standing to file a petition for writ of certiorari. In the district court action, Mr. Scott, was a named plaintiff. Mr. Scott was the patentee of certain patents in suit which he ultimately assigned all right, title and interest in, to Widener University. Mr. Scott therefore lacked standing to be a patentee-plaintiff and has no standing to file the present petition.

Since Mr. Scott, is appearing pro se, he is only entitled to represent any alleged rights he has, and not the rights of any other corporate or other entities.

ARGUMENT

This opposition to Mr. Scott's petition for writ of certiorari is filed by Respondents Avon Products, Inc. and Giorgio of Beverly Hills (hereinafter "Avon" and "Giorgio").

Respondents Avon and Giorgio submit that the Court lacks jurisdiction to grant the petition.

Mr. Scott's Notice of Appeal to the United States Court of Appeals for the Third Circuit, was *untimely* under Rule 4, Rules of Appellate Procedure, since the Notice was dated more than 30 days after entry of each of the judgments and orders appealed from.[2] A timely notice of appeal is jurisdictional and mandatory. *Griggs v. Provident Consumer Discount Co.,* 459 U.S. 56, 61 (1982); 9 *Moore's Federal Practice,* note 4, ¶204.14, pp. 4-124.3 to 4-125.

The district court granted Respondents' motion for summary judgment on all counts of the complaint in an order dated July 7, 1992 (Pet. A-12). Notice of appeal to the Third Circuit (which was the wrong court) were untimely filed on December 18, 1992 and December 23, 1992.

Since Howard Scott's appeal to the Third Circuit was untimely, and was dismissed for lack of jurisdiction on the merits, the Court lacks jurisdiction to hear Mr. Scott's petition for writ of certiorari.

Mr. Scott also lacks standing to file a petition for writ of certiorari. In the district court action, Mr. Scott, was a named plaintiff. Mr. Scott was the patentee of certain patents in suit which he ultimately assigned all right,

---

2. The last Order which plaintiffs appealed from dated November 20, 1992, was the denial of substantially the same motion plaintiffs previously filed on September 11, 1992, which was also denied. Although plaintiffs' Notice of Appeal was filed less than 30 days after November 20, 1992, the appeal with respect to that Order should be dismissed since the movant's request for substantially the same relief was previously denied by the District Court on October 5, 1992, and again previously denied by the Court in its August 27, 1992 Order.

title and interest in, to Widener University. Mr. Scott therefore lacked standing to be a patentee-plaintiff and has no standing to file the present petition. Mr. Scott is not entitled to represent the interests of the other named petitioners, in view of his status as a pro se litigant.

Mr. Howard Scott's motions filed in the district court on and after September 11, 1992, requesting repeated reconsideration and request for removal of plaintiffs' counsel Mr. Wheeler, were barred by *res judicata* and collateral estoppel. The Plaintiffs' filing of these repeated motions and the District Court's repeated denial of these motions therefore did not reset the time period for the taking of an appeal from the July 9, 1992 Order (entered on July 10, 1992), granting Defendants' Motion for Summary Judgment, which expired on or about August 10, 1992.

CONCLUSION

Mr. Scott's petition for writ of certiorari should be denied since his underlying appeal was untimely and he lacks standing to seek review in this Court.

Respectfully submitted,

Alan H. Bernstein,
Counsel of Record
CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
1635 Market Street, 12th Floor
Philadelphia, PA 19103-2212
(215) 567-2010

Robert S. Silver
CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
1635 Market Street, 12th Floor
Philadelphia, PA 19103-2212